

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

JAMES BLAZEK JR.,	§
	§
Plaintiff,	§
VS.	§ CIVIL ACTION NO. 6:16-CV-55
	§
VICTORIA COUNTY, TEXAS, <i>et al</i> ,	§
	§
Defendants.	§

**MEMORANDUM AND RECOMMENDATION TO DISMISS
CASE FOR FAILURE TO PROSECUTE**

Plaintiff filed this prisoner Civil Rights complaint pursuant to 42 U.S.C. § 1983 on September 6, 2016 in the Victoria Division of the Southern District of Texas. (D.E. 1). On August 14, 2017, the U.S. District Clerk notified Plaintiff his pleading was deficient because it did not follow the form approved for use by prisoners filing suit under the federal civil rights statute, 42 U.S.C. § 1983, and for failure to pay the filing fee or to request to proceed *in forma pauperis*. (D.E. 5). The notice instructed Plaintiff to submit a civil rights complaint using the form enclosed entitled Prisoner's Civil Rights Complaint and to either pay the filing fee or to file the enclosed application to proceed without prepayment of fees. (D.E. 5). Plaintiff was directed to comply by September 13, 2017, and was notified that failure to comply may result in his case being dismissed. Plaintiff did not comply.

On or about September 27, 2017, this case was reassigned to Senior United States District Judge Hayden Head and referred to the undersigned Magistrate Judge. On October 5, 2017, the undersigned entered a Notice of Deficiency and ordered Plaintiff to either pay the filing fee or submit an IFP application on or before October 23, 2017. (D.E. 8). Plaintiff was further ordered to notify the Court if he was no longer incarcerated and whether wished to proceed with this action. (D.E. 8, Page 2). Plaintiff was again notified that failure to comply may result in dismissal for want of prosecution. Fed. R. Civ. P. 41(b). Plaintiff has again failed to comply. Plaintiff has not filed any document in this case since the week it was initially filed in September 2016. (D.E. 1, D.E. 2, D.E. 3 and D.E. 4). Further, none of the more recent orders have been returned as undeliverable when sent to the address listed by Plaintiff. (D.E. 4, Page 1).

Therefore, it is respectfully recommended that Plaintiff's case be **DISMISSED** pursuant to Fed.R.Civ.P. 41(b); *see also Martinez v. Johnson*, 104 F.3d 769, 772 (5th Cir. 1997)(holding district courts have the power to *sua sponte* dismiss a cause of action for failure to prosecute).

Respectfully submitted this 31st day of October, 2017.

Jason B. Libby
Jason B. Libby
United States Magistrate Judge

NOTICE TO PARTIES

The Clerk will file this Memorandum and Recommendation and transmit a copy to each party or counsel. Within **FOURTEEN (14) DAYS** after being served with a copy of the Memorandum and Recommendation, a party may file with the Clerk and serve on the United States Magistrate Judge and all parties, written objections, pursuant to 28 U.S.C. § 636(b)(1)(c); Rule 72(b) of the Federal Rules of Civil Procedure; and Article IV, General Order No. 2002-13, United States District Court for the Southern District of Texas.

A party's failure to file written objections to the proposed findings, conclusions, and recommendations in a Magistrate Judge's report and recommendation within **FOURTEEN (14) DAYS** after being served with a copy shall bar that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the District Court. *Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415 (5th Cir. 1996)(en banc).